Dato' Kam Woon Wah & Ors v Mohd Abdul Jalil bin Sarip & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-22-249 OF 1997
JAMES FOONG J
17 OCTOBER 1997

Civil Procedure *— Injunction — Mareva injunction — Whether applicable in an action for defamation — Test to be adopted — Whether same test as in usual Mareva injunction to apply — Whether higher standard of proof as in interim injunction to restrain publication of defamation material to apply — Whether alleged defamation obviously untrue or defence of defendants would fail — Whether defendants had no other assets within jurisdiction or would dissipate assets before judgment*

Tort *— Defamation — Injunction — Mareva injunction — Whether Mareva injunction can be granted pending trial of action — Principles to be applied*

On 20 March 1997, the defendants wrote a letter ('the letter') to the learned judicial commissioner, Dato' Kamalanathan Ratnam (as he then was) referring to a consent order recorded by the parties before the learned judicial commissioner. The letter explained various arbitrary and unlawful acts taken by the plaintiffs in an attempt to dispose of a piece of property ('the land') which formed part of the subject matter of the consent order. The plaintiffs took offence to the contents of the letter and sued the defendants for defamation. The writ of summons was accompanied by a summons in chambers seeking a Mareva injunction to restrain the defendants from removing from the jurisdiction of the court any of the defendants' assets, in particular the proceeds the defendants would receive from the land. The defendants had taken control over the disposal of the land from the plaintiffs and were in the course of concluding a sale of the land to third parties which would entitle the defendants to a substantial portion of the proceeds of sale. The plaintiffs contended that the defendants had no other assets within the jurisdiction save for the proceeds and would take steps to dissipate or diminish the same, hence the application for a Mareva injunction. The defendants, inter alia, raised the following defences: (i) a Mareva injunction is not applicable to a defamation suit; (ii) as justification was pleaded as a defence in the defamation suit, the application for a Mareva injunction, which is of an interlocutory nature, could not be granted; and (iii) no solid evidence was adduced to support the contention that the defendants had no other assets or would be dissipating the assets which they would receive from the sale of the land.

Held, dismissing the application:

(1) The reservation in *Allen*'s case against the extension of a Mareva injunction in a personal injury case was based on the reasoning that a plaintiff in such a case may not be in a position to meet the liability that may accrue under the undertaking as to damages as compared to a mercantile transaction. By the same token, this

reservation ought to apply to other causes of action. However, this factor of financial ability cannot outweigh the more fundamental consideration that justice ought to be done and the relief in the form of a Mareva injunction should be extended to all kinds of cases be it that of contract, personal injury or defamation, as in this case (see p 206C–G); *Allen & Ors v Jambo Holdings Ltd & Ors* [1980] 2 All ER 502 followed.

(2) In an action for a Mareva injunction, a 'good arguable case' must be shown whereas in a libel action, the courts are slow to issue an interim injunction unless it is clear that the alleged libel is untrue. The fundamental difference between these two propositions was that of the standard of proof, namely, that in an application for an interim injunction to restrain publication of defamatory material, a higher standard of proof was required as compared to that of an application for a Mareva injunction (see pp 207F and 208A–C).

(3) When the importance of leaving free speech unfettered is placed on such a high pedestal that even the well-accepted principles of an interim injunction as disposed in *American Cyanamid*'s case were inapplicable in a suit concerning defamation where justification, comment or unqualified privilege without malice was pleaded as a defence, this same priority must similarly be accepted in the consideration of a Mareva injunction concerning a defamation case where the same defences are pleaded.

The test for a Mareva injunction must therefore be altered to that of 'where the statement is so obviously untruthful or where the plaintiff had satisfied the court that the defence will fail'. This is logical as otherwise it becomes easier to secure a Mareva injunction before judgment than to restrain publication of alleged defamatory material before trial (see pp 208F–I and 209A); *New Straits Times Press (M) Bhd v Airasia Bhd* [1987] 1 MLJ 36 followed and *Lee Kuan Yew v Tan Liang Hong & other actions (No 1)* [1997] 2 SLR 819 not followed.

(4) Without any apparent proof that the alleged defamatory statement was obviously untrue, or being satisfied that the defences would fail, the plaintiffs failed to fulfill the first requirement for the Mareva injunction.

With regard to the second condition, the plaintiffs had also failed to adduce any solid evidence to support the contention that the defendants had no assets or would be dissipating their only asset immediately upon receipt of the same (see pp 209F–I and 210A–B).

[Bahasa Malaysia summary

Pada 20 Mac 1997, defendan-defendan telah menulis sepucuk surat ('surat tersebut') kepada pesuruhjaya kehakiman yang bijaksana, Dato' Kamalanathan Ratnam (pada masa itu) yang merujuk kepada

satu perintah persetujuan yang direkodkan oleh pihak-pihak di hadapan pesuruhjaya kehakiman yang bijaksana tersebut. Surat tersebut menjelaskan pelbagai perbuatan sewenang-wenang dan menyalahi undang-undang yang dilakukan oleh plaintif-plaintif dalam satu percubaan untuk melupuskan sebidang harta ('tanah tersebut') yang membentuk sebahagian daripada perkara subjek perintah persetujuan. Plaintif-plaintif telah berasa tersinggung terhadap kandungan surat tersebut dan mendakwa defendan-defendan untuk fitnah. Writ saman diiringi oleh satu saman dalam kamar meminta injunksi Mareva untuk menahan defendan-defendan daripada memindah mana-mana aset defendan-defendan dari bidang kuasa mahkamah, khususnya hasil jualan yang akan diterima oleh defendan-defendan daripada tanah tersebut. Defendan-defendan telah menguasai pelupusan tanah daripada plaintif-plaintif dan sedang dalam proses menamatkan jualan tanah tersebut kepada pihak ketiga yang akan membolehkan defendan-defendan mendapatkan sebahagian besar hasil jualan. Plaintif-plaintif menghujahkan bahawa defendan-defendan tidak mempunyai apa-apa aset lain dalam bidang kuasa kecuali hasil jualan dan akan mengambil langkah untuk melesapkan atau mengurangkan yang sama, justeru itu permohonan untuk satu injunksi Mareva. Defendan-defendan, antara lain, membangkitkan pembelaan berikut: (i) injunksi Mareva tidak terpakai kepada guaman fitnah; (ii) oleh kerana justifikasi diplidkan sebagai suatu pembelaan dalam guaman fitnah, permohonan untuk satu injunksi Mareva, yang bersifat interlokutori, tidak boleh diberikan; dan (iii) tiada keterangan kukuh telah dikemukakan bagi menyokong hujah bahawa defendan-defendan tidak mempunyai sebarang aset lain atau akan melesapkan aset-aset yang mereka akan menerima daripada jualan tanah tersebut.

Diputuskan, menolak permohonan:

(1) Kesangsian dalam kes *Allen* terhadap lanjutan satu injunksi Mareva dalam suatu kes kecederaan diri adalah berdasarkan taakulan bahawa plaintif dalam kes sedemikian mungkin tidak berada dalam kedudukan untuk memenuhi liabiliti yang boleh terakru di bawah akujanji tentang ganti rugi berbanding dengan transaksi merkantil. Begitu juga, kesangsian ini harus terpakai kepada kausa tindakan lain. Namun demikian, faktor keupayaan kewangan ini tidak boleh melebihi pertimbangan yang lebih asas bahawa keadilan patut dilakukan dan relief berbentuk injunksi Mareva harus dilanjutkan kepada semua jenis kes biarpun kontrak, kecederaan diri atau fitnah, seperti dalam kes ini (lihat ms 206C–G); *Allen & Ors v Jambo Holdings Ltd & Ors* [1980] 2 All ER 502 diikut.

(2) Dalam satu tindakan untuk injunksi Mareva, suatu 'kes yang kukuh dan boleh dihujahkan' mesti ditunjukkan manakala dalam tindakan libel, mahkamah berwaspada dalam mengeluarkan injunksi interim melainkan ternyata bahawa libel yang dikatakan adalah tidak benar. Perbezaan asas di antara dua saranan ini

berkaitan dengan darjah membukti, iaitu, bahawa dalam suatu permohonan untuk injunksi interim bagi menahan penerbitan fitnah, satu darjah membukti yang lebih tinggi dikehendaki berbanding dengan satu permohonan untuk injunksi Mareva (lihat ms 207F dan 208A–C).

(3) Apabila kepentingan membiarkan kebebasan bersuara tidak terbelenggu dipuja dengan begitu tinggi hinggakan prinsip mantap suatu injunksi interim seperti yang ditentukan dalam kes *American Cyanamid* tidak terpakai dalam guaman yang melibatkan fitnah di mana justifikasi, ulasan atau perlindungan tanpa syarat tanpa niat jahat diplidkan sebagai pembelaan, keutamaan yang sama ini mestilah juga diterima dalam pertimbangan injunksi Mareva berkenaan dengan kes fitnah di mana pembelaan yang sama diplidkan.

Ujian untuk satu injunksi Mareva dengan itu mestilah ditukar kepada 'di mana pernyataan adalah begitu palsu atau di mana plaintif telah memuaskan mahkamah bahawa pembelaan akan gagal'. Ini adalah wajar kerana jika tidak ia akan menjadikannya lebih mudah untuk menjamin satu injunksi Mareva sebelum penghakiman berbanding dengan menahan penerbitan material fitnah yang dikatakan sebelum perbicaraan (lihat ms 208F–I dan 209A); *New Straits Times Press (M) Bhd v Airasia Bhd* [1987] 1 MLJ 36 diikut dan *Lee Kuan Yew v Tan Liang Hong & other actions (No 1)* [1997] 2 SLR 819 tidak diikut.

(4) Tanpa sebarang bukti jelas bahawa kenyataan fitnah yang dikatakan adalah tidak benar, atau memenuhi bahawa pembelaan-pembelaan akan gagal, plaintif-plaintif telah gagal memenuhi keperluan pertama untuk injunksi Mareva.

Berhubung dengan syarat kedua, plaintif-plaintif juga telah gagal mengemukakan sebarang keterangan kukuh bagi menyokong hujah bahawa defendan-defendan tidak mempunyai aset-aset atau akan melesapkan aset-aset mereka sebaik sahaja menerimanya (lihat ms 209F–I and 210A–B).]

Notes

For cases on Mareva injunction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1662–1697.

For cases on defamation, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 138–261.

Cases referred to

Allen & Ors v Jambo Holdings Ltd & Ors [1980] 2 All ER 502 (folld)
American Cyanamid v Ethicon Ltd [1975] AC 396 (refd)
Bonnard v Perryman [1891] 2 Ch 259 (refd)
Herbage v Pressdram Ltd & Ors [1984] 2 All ER 769 (refd)
Lawrence Kwek v Lim Han Yong [1989] 3 MLJ 210 (refd)
Lee Kuan Yew v Tan Liang Hong & other actions (No 1) [1997] 2 SLR 819 (not folld)

A *New Straits Times Press (M) Bhd v Airasia Bhd* [1987] 1 MLJ 36 (folld)
Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co KG [1984] 1 All ER 398 (refd)
S & F International Ltd v Trans-Con Engineering Sdn Bhd [1985] 1 MLJ 62 (refd)
B

Joseph Yeo (AJ Ariffin Yeo & Harpal) for the plaintiffs.
V Ramanathan (Rama Velu & Associates) for the defendants.

James Foong J: On 20 March 1997, the defendants wrote a letter ('the C letter') to the honourable judicial commissioner, Dato' Kamalanathan Ratnam. It referred to a case where the learned judicial commissioner had recorded a consent order ('the consent order') between the parties. The parties there were the plaintiffs and the defendants respectively in this present suit, except in the reverse role. The letter explained various arbitrary and unlawful acts taken by the plaintiffs in an attempt to dispose of a piece D of landed property ('the land') which the parties shared. This, the defendants claimed, was inconsistent with the terms of the consent order. Based on this letter, the plaintiffs — who are all partners of a legal firm known as M/s Kam Woon Wah & Partners — charged the defendants for libel. They thus brought this action for defamation against the defendants. The defences E pleaded by the defendants are justification and fair comment. Though not expressly stated, they also claimed qualified privilege.

Simultaneous to the filling of the writ of summons and statement of claim in this case the plaintiffs also applied, by way of summons-in-chambers, for a Mareva injunction. It is to restrain the defendants 'from F removing from the jurisdiction of this court any of the defendants' assets, in particular the proceeds which they will receive from the sale of the land'.

From the affidavits of the parties, I gathered that the defendants had taken control over the disposal of the land from the plaintiffs. The defendants are now in the course of completing the sale of the land for a consideration of RM20m. Out of this, the defendants will stand to be entitled to a G substantial portion. Assessing the defendants to have no other assets besides their entitlement to the land or the proceeds therefrom, and verily believing that the defendants would take steps to dissipate or diminish their portion of the proceeds of sale, the plaintiffs are seeking this Mareva injunction to secure satisfaction on damages, if they succeed in this H defamation suit against the defendants.

Determined that the plaintiffs must not succeed in this application for a Mareva injunction, the defendants raised the following defences:

(1) a Mareva injunction is not applicable to a defamation suit;

I (2) as justification was pleaded as a defence in this defamation suit, this application for a Mareva injunction, which is of an interlocutory nature, could not be granted;

(3) no solid evidence was adduced to support the contention that the defendants had no other assets or would be dissipating the assets which they would receive from the sale of the land;

(4) this court had no jurisdiction to grant a Mareva injunction that may be contrary to the consent order issued by a court of concurrent jurisdiction.

On the first issue raised by the defendants, it is true that since the day the Mareva injunction gained a foothold in the common law, the subject matter litigated was of a commercial nature. Can this then be applied to a case where the cause of action is one of defamation?

In 1980, the Court of Appeal in England — in the case of *Allen & Ors v Jambo Holdings Ltd & Ors* [1980] 2 All ER 502 — had the opportunity to encounter an application for a Mareva injunction where the claim was that of a personal injury arising out of the tort of negligence. By a unanimous decision of the court, the sphere of applicability of this relief was extended to such a claim. The rationale for this extension is best summed up by Shaw LJ as follows (at p 505):

> Counsel who has argued this appeal on behalf of the first and second defendants has not suggested that there is any real difference in principle between an action for personal injury such as this one and an action in respect of some mercantile transaction. What he has said is that one ought to look more cautiously at the situation because in commercial disputes it is usually the case that a plaintiff will be in a position to meet any potential liability under his undertaking to damages if he asks for a Mareva injunction and then loses the action. But, as Lord Denning MR has pointed out, question of financial stability ought not to affect the position in regard to what is the essential justice of the case as between the parties.

In my view, when the only reservation against the extension of a Mareva injunction in a personal injury case is one of solely financial ability then, by the same token, it must also be the same reason for other causes of action. But since this factor cannot outweigh the more fundamental consideration that justice ought to be done, as expounded in *Allen's* case, the relief in the form of a Mareva injunction should also be extended to all kinds of cases, be that of contract, personal injury or defamation. By this, I find that the defendant's first contention must fail; a Mareva injunction is applicable to cases where the cause of action is that of defamation.

On the second ground, the defendants based their argument by analogy to the series of authorities which expressed that the courts should be slow in granting an interlocutory injunction in a libel suit where the defendant pleads justification (*Lawrence Kwek v Lim Han Yong* [1989] 3 MLJ 210), fair comment (*New Straits Times Press (M) Bhd v Airasia Bhd* [1987] 1 MLJ 36) and qualified privilege with no malice (*Herbage v Pressdram Ltd* [1984] 2 All ER 769). The leading exponent of this principle is the Federal Court decision of *New Straits Times Press (M) Bhd v Airasia Bhd* where Abdul Hamid Ag LP (as he then was) had this to say (at p 39):

> The court should act cautiously in granting interim injunction to restrain publication of an alleged defamatory statement. In fact it should not grant the injunction where the defendant says he is going to justify it at the trial of the action except where the statement is obviously untruthful or where

A the plaintiff has satisfied the court that the defence will fail. That was made clear by Denning MR in *Harakas v Baltic Exchange* [1982] 2 All ER 701 at p 703.

But as argued by the plaintiffs' counsel, these cases relied on are solely restricted to the restraint on publication of the alleged defamation; not an B interlocutory injunction to restrain the disposal of assets for fear of receiving no monetary satisfaction on a claim for libel. He felt that these cases should be extinguished and the test to be applied must be that of Mustill J in *Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co KG* [1984] 1 All ER 398, which was accepted by our Federal Court in *S & F International Ltd v Trans-Con Engineering Sdn Bhd* [1985] 1 MLJ 62, and C is as follows (at p 64):

> ... (1) Before a Mareva injunction will be granted, a plaintiff must show first that he has a good arguable case, which is more than being barely capable of serious argument, but not necessarily one that the judge believes has got more than fifty per cent chance of success; (2) Before such relief is granted D the plaintiff must secondly show that there is a risk that assets will be dissipated: he must demonstrate this by solid evidence, eg that the defendant's previous actions show his probity is not to be relied upon or that the corporate structure of the defendant infers that it is not to be relied upon, but mere proof that the defendant is incorporated abroad will not suffice; (3) In reaching its conclusion, the court should take into account the E defendant's evidence as well as the plaintiff's.

From the cases cited above, two distinctive sets of principles seem to emanate; both dealing with interlocutory injunction (though of a different nature) and on similar substantive subject matter — defamation. In *New Straits Times*' case, the courts are cautioned to 'be slow in issuing interim F injunction in a libel action' until it is clear that the alleged libel is untrue. The Federal Court in the pronouncement of this stance was much influenced by the authoritative passage of Lord Coleridge delivered in the case of *Bonnard v Perryman* [1891] 2 Ch 259 at p 284. It is as follows:

> The right of free speech is one which it is for the public interest that individuals should possess, and indeed, that they should exercise without G impediment; so long as no wrongful act is done; and unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and H warily with the granting of interim injunctions. We entirely approve of, and desire to adopt as our own, the language of Lord Esher MR in *Coulson v Coulson* 3 Times LR 846 — 'To justify the court in granting an interim injunction it must come to a decision upon the question of libel or no libel, before the jury have decided whether it was a libel or not. Therefore the jurisdiction was of a delicate nature. It ought only to be exercised in the I clearest cases, where any jury would say that the matter complained of was libellous, and where, if the jury did not so find, the court would set aside the verdict as unreasonable'.

Compare this then to the first condition as set out by Mustill J in *Ninemia*'s case. There it only requires the plaintiff to 'show first that he has a good arguable case, which is more than being barely capable of serious argument, but not necessarily one that the judge believes has got more than fifty per cent chance of success'.

The fundamental difference between these two propositions, to my mind, is on the standard of proof. In an application for an interim injunction to restrain publication of defamatory material, a higher standard of proof seems to be required as compared to that of an application for a Mareva injunction to restrain a defendant from disposing or dissipating his assets before judgment in a defamatory suit. In the former, even the well-settled principle enunciated in *American Cyanamid v Ethicon Ltd* [1975] AC 396 which governs the granting or refusal of an interim injunction is not applicable. This is explicitly confirmed in *New Straits Times*' case (at p 38):

> In accordance with the long established practice in defamation action, the principles enunciated by the House of Lords in *American Cyanamid v Ethicon Ltd* [1975] AC 396 relating to interim injunctions are not applicable in action for defamation (*Herbage v Pressdram Ltd* [1984] 1 WLR 1160 at p 1162).

And the underlying objective to this deviation is (per Abdul Hamid Ag LP in *New Straits Times*' case (at p 39)):

> ... by reason of the fact that the questions of libel or no libel are eminently matters to be decided on facts at the trial and there is also the question of the proper meaning to be assigned to the words used in a particular statement. To restrain a defendant before the questions are determined would amount to fettering with free speech. Indeed it is because of the importance of leaving free speech unfettered that the court must be slow in issuing interim injunction in a libel action.

When the importance of leaving free speech unfettered is placed on such a high pedestal, where even the well accepted principle for consideration of an interim injunction as disposed in *American Cyanamid*'s case is inapplicable in a suit concerning defamation where justification, fair comment or qualified privilege without malice is pleaded as a defence, I am of the view that this priority must similarly be accepted in the consideration of a Mareva injunction concerning a defamation case where the same defences are insisted upon. Since the test in *American Cyanamid*'s case which involves the determination of whether 'the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial' is no longer applicable in a defamation case of a nature explained above, the first condition laid down in *Ninemia*'s case for a Mareva injunction must also be varied in cases of this nature. The test must thus be altered to that of 'where the statement is obviously untruthful or where the plaintiff has satisfied the court that the defence will fail'; in line with and corresponding to that expounded in *New Straits Times*' case. This is logical; otherwise, it becomes easier to secure a Mareva injunction against the property of the defendants before judgment than to obtain an interim injunction to restrain publication of alleged defamatory material before

trial, considering the fact that in both these applications the questions of whether there is defamation or no defamation can only be determined at trial.

The very recent Singapore case of *Lee Kuan Yew v Tang Liang Hong & other actions (No 1)* [1997] 2 SLR 819 was brought to my attention by learned counsel for the plaintiffs. In that case, a Mareva injunction was granted against the defendant on a defamation suit brought by the plaintiff. The learned judge (at p 824 para 6 of the report) applied the conventional approach of:

> Courts have required applicants for Mareva injunctions to show, inter alia, that they have a good arguable claim or there are serious questions to be tried and, further, they have to prove by 'solid evidence' that there is a real risk of a defendant dissipating his assets here and abroad, before a judgment or award is satisfied.

I am of the view that this particular issue on the differences in application of legal principles in defamation suits on interim injunctions, Mareva or otherwise, may not have been canvassed before this distinguished and respected judge. This deprivation may have been caused by the absence of legal representation for the defendants, as the law report indicates that only counsel for the plaintiffs appeared. For this, I am not inclined to be influenced by this authority.

Having established the principle to be applied, I find that except for the mere allegation by the plaintiffs in their affidavit that the letter alleging defamation is untrue, no other evidence was tendered to explain why they are false. I also find no traces in the plaintiffs' affidavit to support the contention that the defendants' defences will fail. Without any apparent proof that the alleged defamatory statement is obviously untrue, or being satisfied that the defendants' defences will fail, the plaintiffs have failed to fulfill their first condition in their quest for this Mareva injunction.

I now move on to the second condition which needs to be satisfied before a Mareva injunction can be granted. For this, the plaintiffs must adduce solid evidence to support their contention that the defendants have no other assets, or will be dissipating their only asset — which is the proceeds of the sale of the land — immediately upon receipt of the same.

Upon perusal of the plaintiffs' affidavit filed in support of this application, I find only two paragraphs devoted to this significant aspect. In the first, the deponent of the affidavit — the fifth plaintiff, who was also authorized to make this affidavit on behalf of the other plaintiffs — affirmed that the defendants 'verily believe that in the event the land is disposed of, the defendants will take steps to dissipate or diminish the proceeds thereof and any judgment which the other plaintiffs and I may obtain against them will be left unsatisfied'. He contended that this belief is based on the conduct of the defendants whom he alleged did not comply with the consent order to surrender the title of the land to the plaintiffs as solicitors during the tussle as to which of the two parties who shared this land had the right to sell the same. As for the second paragraph, this plaintiff verified that he 'verily believes that the defendants will take steps

to dissipate or diminish their assets or money to avoid paying any damages which the other plaintiffs herein and I (he) may obtain against them in this proceedings'.

Such statements are only allegations. They are not solid evidence backed by a finding of a court that what the defendants did was unjustified and unlawful. The claim that the defendants had failed to comply with the terms of the consent order to surrender the title to the land is in fact an issue in a pending suit between the parties. As this case has yet to be decided, the claim by the plaintiffs that the probity of the defendants are suspected based on this allegation cannot be accepted; the finding by the court may turn out that what the defendants did was justified and not in breach of the consent order. Such an inconclusive allegation certainly does not fall within the category of 'solid evidence'.

As for the last point raised by the defendants, I find no connection between the effect in the granting of a Mareva injunction to the consent order. Each claim stands independently on its own, and I cannot comprehend how it can affect the other. For this, there is no necessity for me to entertain this issue further.

As the plaintiffs have failed to satisfy the court on the conditions as laid down above, I accordingly order this plaintiffs' application in encl 3 to be dismissed with costs.

Application dismissed.

Reported by Lew Chee Seong